83-1729 (1)

No.

IN THE

Supreme Court of the United States

October Term, 1983

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and as representatives of the class herein defined,

Petitioners,

against

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS, AND HELPERS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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52pp

Question Presented for Review.

Whether a potential "destructive effect on organized labor" relieves an international union, the sole statutory collective bargaining representative, from claims for breaches of contract and its duty of fair representation based on the activities of its local affiliates to which it has assigned the administration of exclusive job referral procedures.

Table of Contents and Authorities.

CASES:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983.

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and as representatives of the class herein defined,

Petitioners,

against

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Petitioners pray that a writ of certiorari issue to the United States Court of Appeals for the Second Circuit on its judgment entered in this case.

Reports Below.

The opinion of the Court of Appeals (A1) is unreported and, at the direction of that court (A3), "shall not be reported, cited or otherwise used in unrelated cases before this or any other court." The opinion of the United States District Court for the Northern District of New York (A6) is reported at 567 F.Supp. 845 (1983).

Jurisdiction.

The judgment of the United States Court of Appeals for the Second Circuit was dated and entered on December 13, 1983. Its judgment denying the petition for rehearing *in banc* (A4) was dated and entered on January 26, 1984. The jurisdiction of this Court is invoked under 28 USC §1254(1).

Statute Involved.

Section 301(b) and (e) of the Labor Management Relations Act of 1947 (Act) (29 USC §185(b) and (e)) provide that

> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act . . . shall be bound by the acts of its agent . . . .
>
> (e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Section 2(1) of the Act (29 USC §152(1)) provides that

> (1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Section 2(13) of the Act (29 USC §152(13)) provides that

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specified acts performed were actually authorized or subsequently ratified shall not be controlling.

Statement of the Case.

Appellants Boss and Rawlins brought this class action on behalf of themselves and all other field construction boilermakers who are qualified to register for job referrals under exclusive procedures administered by local affiliates of the respondent International Union throughout the continental United States.* The basis for federal jurisdiction in the District Court is Section 301 of the Labor Management Relations Act of 1947, 29 USC §185 and 28 USC §1337.

The exclusive job referral procedures are adopted in six multi-state agreements entered into by employer associations and the respondent International Union as the sole statutory collective bargaining representative of employees. The local affiliates of respondent International Union are neither party-signatories to nor recognized collective bargaining representatives under the collective bargaining agreements.

Local exclusive job referral procedures are governed by minimum standards adopted by agreement of employer representatives and the respondent International Union at Scottsdale, Arizona on January 7, 1977 in "National Joint Rules and Standards Governing Operation of Exclusive

*The assertion in the Second Circuit decision (A2) that the class action is brought "on behalf of residents of New York" misstates the clear content of the complaint (See A17, ¶15).

Referral Plans" (A24). That agreement is an update of the so-called "San Francisco Agreement" of 1959 (A34). The National Joint Rules and Standards are explicitly incorporated into the six multi-state collective bargaining agreements and provide for the exclusive job referral plans which are administered by affiliates of the respondent International Union under the supervision of Local Joint Referral Rules Committees composed of union and employer representatives. The union representatives are appointed by the president of the respondent International Union or his designee and, invariably, are the business agents of the Local and District Lodges which actually administer the exclusive job referral procedures.

The United States District Court for the Northern District of New York granted respondent's motion for summary judgment dismissing the complaint (A6). Relying on *Carbon Fuel Co. v. United Mine Workers of America,* 444 U.S. 212 (1979), the court applied agency principles and determined that the respondent International Union is not vicariously liable for the acts of its local affiliates.

The United States Court of Appeals for the Second Circuit affirmed, holding (A2-3) that

> Although *Carbon Fuel* can be distinguished as an action between a union and an employer where the breach concerned unauthorized strikes, we follow its rule that an international union is not liable for the acts of its local affiliate absent a showing that the international instigated, supported, ratified or encouraged the local activity. 444 U.S. at 213. The failure to so limit the liability of an international in cases alleging an international's breach of duty of fair representation would have a destructive effect

on organized labor. *See Mauget v. Kaiser Engineer, Inc.*, 105 L.R.R.M. 3374, 3375-76 (S.D. Ohio 1980).

Argument.

The Court of Appeals purports to adopt the rule of this Court in *Carbon Fuel* but introduces to the federal common law the rule that, *solely* to avoid a destructive effect on organized labor, international unions will not be held to the duty of fair representation. In *Mauget v. Kaiser Engineer, Inc., supra,* the local union was also a party to the collective bargaining agreement and there was no showing that it was administering the grievance procedure as an agent of the international union.

We submit that the rule of the Court of Appeals conflicts with the decision of this Court in *Carbon Fuel* and that the liability of an international union, which is a sole employee representative, for breaches of contract and the duty of fair representation is an extremely important question of federal labor law which should be settled by this Court.

The Court of Appeals correctly notes that there is a considerable body of federal case law which applies agency principles in determining that an International Union is not liable for the acts of its affiliates. However, in *none* of those cases was the international union the sole and exclusive statutory collective bargaining representative of employees. Respondent International Brotherhood has the status and rights of a statutory bargaining representative and should not be permitted to avoid the responsibility

and liability of that status by assigning the performance of substantial representative functions to its affiliate Local and District Lodges. The decision of the Court of Appeals mandates that result and will spawn substantial breach of fair representation litigation if it is not now reversed by this Court.

POINT I.

An international union which is the sole statutory collective bargaining representative is vicariously liable for the breaches of contract and its duty of fair representation by local affiliates to which it has assigned the administration of exclusive job referral procedures.

As the recognized exclusive bargaining agent of the employees covered by the six agreements, the respondent International Union has a *statutory* obligation of fair representation. *Vaca v. Sipes,* 386 US 171, 177 (1967). The fact that it is recognized by contract and not certified by the National Labor Relations Board does not detract from its statutory rights and obligations. *NLRB v. Gissel Packing Co.,* 395 US 575 (1969). Its status as the statutory bargaining agent and sole employee-representative signatory of the labor agreements is crucial. See *Teamsters Local 30 v. Helms Express, Inc.,* 581 F2d 211 (CA 3), *cert. den.,* 444 US 837 (1979), which denies a fair representation claim against the Eastern Conference of Teamsters because it was not a signatory to the labor agreement and was not the statutory collective bargaining agent.

The duty of fair representation "is a federal obligation which has been judicially fashioned from national labor statutes." *Abrams v. Carrier Corp.,* 434 F2d 1234, 1251 (CA 2, 1970), *cert. den.,* 401 US 1009 (1971). It is a federal

common-law duty fashioned by the Courts. We submit that, as part of that federal common law, the respondent International Union should be estopped to deny liability for the acts of its affiliates in administering the exclusive referral procedures. Otherwise, it will have avoided its sole statutory and contractual obligations by assigning that substantial representative function to its constituent Local Lodges. Under *Teamsters Local 30 v. Helms Express, Inc.*, the Local Lodges can avoid liability by the accurate claims that they have no Section 301 liability because they are neither a signatory to the agreements nor a statutory bargaining agent.

The assignment of the administration of the referral procedures to Local Lodges is appropriate. However, in performing that function, the Local Lodges are clearly acting "in accordance with their fundamental agreement of association" (*Coronado Coal Co. v. Mine Workers,* 268 US 295 (1925)) with the respondent International Union.

In *Carbon Fuel, supra,* this Court holds that Congress adopted the common-law agency test and applied the common-law doctrine of *respondeat superior* to unions. The instant case provides a classic example for the application of that common law without resort to any discussion of the autonomous status of the Local Lodges.

As the sole exclusive statutory bargaining agent of the employees involved, the respondent became their sole representative-signatory to the labor agreements which require the operation of non-discriminatory job referral plans. The agreements assign the day-to-day administration of those plans to respondent's Local Lodges. Under

common law agency tests and *respondeat superior*, that assignment cannot relieve the respondent of its statutory and contractual obligations. A Local Lodge which undertakes to administer those plans with even implied notice to the respondent is necessarily acting as its agent.

Carbon Fuel, supra, was brought by an employer against an International Union and three of its local unions for damages resulting from wild-cat strikes of the local unions which concededly were contract violations. There is absolutely no suggestion in that case that the local unions were acting on behalf of the International in engaging in those strikes. The sole question was whether the international union had an obligation to "use all reasonable means available to it to prevent the strikes or bring about their termination." 444 US at 213. The Court's discussion of common-law agency and *respondeat superior* serves only to describe such an obligation as being outside those common law tests and doctrines in the context of wild-cat strikes condemned by the international union.

Appellants' claims are against their sole statutory collective bargaining agent which is the sole employee-representative signatory and party to the collective bargaining agreement alleged to have been violated. Respondent's claim that it is not liable because its Local Lodges administer the referral plans raises the issue of whether the basic responsibility for such statutory and contraction obligations can be assigned. We submit that the federal common law should reject that notion and that there is no need to apply or even reach the common law tests of agency. The clear language of sections 2(13), 301(d) and 301(e) of the Act (pages 2-3, *supra*) requires that vicarious liability be imposed.

CONCLUSION.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.

Decision of United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 13th day of Dec. one thousand nine hundred and eighty-three.

Present:

Hon. James L. Oakes
Hon. Thomas J. Meskill
Hon. Lawrence W. Pierce
Circuit Judges.

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and as representatives of the class herein defined,

Plaintiffs-Appellants,

v.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,

Defendants-Appellees.

No. 83-7554

Appellants Boss and Rawlins appeal from a judgment entered on June 16, 1983, in the United States District Court for the Northern District of New York, Roger J. Miner, *Judge,* granting a motion for summary judgment in favor of defendant-appellee International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (International).

Appellants, who sought to bring this class action complaint on behalf of residents of New York claiming to be qualified for referral as construction "boilermakers" under the terms of the applicable collective bargaining agreement, alleged breach of that agreement in violation of 28 U.S.C. § 185 and breach of the duty of fair representation in violation of 28 U.S.C. § 151 *et seq.* Appellants contend that the district court erred in holding that International was not vicariously liable for the acts of Local Lodge 197, an affiliate of International, in the operation of a job referral program instituted under the collective bargaining agreement signed by International.

The district court, relying on a considerable body of federal case law, *see, e.g., Carbon Fuel Co. v. United Mine Workers of America,* 444 U.S. 212 (1979); *Coronado Coal Co. v. United Mine Workers of America,* 268 U.S. 295 (1925); *Shimman v. Frank,* 625 F.2d 80 (6th Cir. 1980), applied agency principles and determined that International was not liable for the acts of its local affiliate. We affirm substantially for the reasons set forth in Judge Miner's memorandum opinion, reported at 567 F. Supp. 845 (1983).

Although *Carbon Fuel* can be distinguished as an action between a union and an employer where the breach concerned unauthorized strikes, we follow its rule that an international union is not liable for the acts of its local affiliate absent a showing that the international instigated, supported, ratified or encouraged the local activity. 444

U.S. at 213. The failure to so limit the liability of an international in cases alleging an international's breach of duty of fair representation would have a destructive effect on organized labor. *See Mauget v. Kaiser Engineer, Inc.*, 105 L.R.R.M. 3374, 3375-76 (S.D. Ohio 1980).

The judgment of the district court is affirmed.

HON. JAMES L. OAKES
HON. THOMAS J. MESKILL
HON. LAWRENCE W. PIERCE
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

United States Court of Appeals
Filed Dec 13 1983
Second Circuit

Decision of United States Court of Appeals for the Second Circuit Denying Petition for Rehearing *In Banc.*

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 26th day of January one thousand nine hundred and eighty-four.

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and as representatives of the class herein defined,

Plaintiffs-Appellants,

v.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,

Defendants-Appellees.

No. 83-7554

A petition for rehearing containing a suggestion that the action be reheard *in banc* having been filed herein by counsel for the appellants, Willard Boss, *et al.*,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for hearing *in banc* has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. DANIEL FUSARO, Clerk

by VICTORIA C. DALTON,
Deputy Clerk

United States Court of Appeals
Filed
Jan 26 1983
A. Daniel Fusaro, Clerk
Second Circuit

Decision of the United States District Court for the Northern District of New York.

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF NEW YORK.

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and as representatives of the class herein defined,

Plaintiffs,

against

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,

Defendant.

No. 82-CV-352

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ROGER J. MINER, D.J.

Memorandum-Decision and Order

I

In this class action, plaintiffs allege that the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (hereinafter "International") breached both its duty of fair representation and certain collective bargaining agreements. These claims arise under section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, and jurisdiction is predicated upon 28 U.S.C. § 1337. Before this Court are defendant's motion for summary judgment pursuant to Fed. R. Civ. P. 56(b) and plaintiffs' motion for class certification pursuant to Fed. R. Civ. P. 23.

II

The facts here are simple and straightforward. The named plaintiffs are residents of New York who claim to be qualifed for referral as construction "boilermakers" under the terms of applicable labor agreements and who

allege that they were denied employment for reasons which are "irrelevant, invidious or unfair to, or in derogation of, the employment status of such plaintiffs." (Complaint, ¶ 29). Although no specific allegation of involvement by the International is made, plaintiffs maintain that defendant International stands "throughout the United States . . . [as the] . . . exclusive representative of employees for the purposes of collective bargaining . . ." and, therefore, all "subordinate subdivisions serve as defendant's agents in administering the exclusive referral procedures contained in the labor contracts . . ." (Complaint, ¶¶ 5, 11). Accordingly, through affiliated local unions, acting as "agents," the International is perceived to have breached both the collective bargaining agreements and the federally imposed duty of fair representation in the "administration of exclusive referral procedures." (Complaint, ¶ 15). As a result, plaintiffs allege that they "have [along with other unnamed persons throughout the country] been denied employment under such contracts. . . ." (Complaint, ¶ 26).

III

Section 301(b) and (e) of the National Labor Relations Act, 29 U.S.C. § 185(b) and (e), provide in part as follows:

> (b) Any labor organization which represents employees in an industry affecting commerce . . . shall be bound by the acts of its agents . . . .
>
> * * *
>
> (e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the

> specific acts performed were actually authorized or subsquently ratified shall not be controlling.

The issue here is whether the local union is an agent of the International so that the International may be held vicariously liable for the improper acts alleged.

A considerable body of federal case law applying agency[1] principles to labor relations reflects the importance of "control" by establishing the rule that a local union is *not* an agent of the International if that local is "autonomous and independent." *See, e.g., Shimman v. Frank,* 625 F.2d 80, 97 (6th Cir. 1980); *Barefoot v. International Brotherhood of Teamsters,* 424 F.2d 1001 (10th Cir. 1970), *cert. denied,* 400 U.S. 950 (1971); *Baldwin v. Poughkeepsie Newspapers, Inc.,* 410 F. Supp. 648 (S.D.N.Y. 1976). In order to determine the local's autonomy, courts have looked at the constitution and the by-laws of the union. *Shimman v. Frank, supra; Barefoot v. International Brotherhood of Teamsters, supra.*

However, neither complete separation nor total lack of control by the International is required to determine that a

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[1] Agency is, of course, a contractual, consensual relationship where one agrees to act on behalf of another. The Restatement 2d of the Law of Agency defines the relationship as follows:

> The fiduciary relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

Restatement of the Law of Agency 2d, sub. sec. 1(1)(1958). The elements of common law agency are thus: (1) consent; (2) fiduciary duty; (3) absence of gain or risk to the agent; and (4) control by the principal. H.G. Reuschlein and W.A. Gregory, *Agency and Partnership* 11 (1979). The element most essential to the demonstration of any agency relationship is that of "control." *Id.* It is important to note that common law doctrines of agency have been incorporated into the corpus of federal labor law. *See United Mine Workers v. Gibbs,* 383 U.S. 715 (1966).

local is autonomous. Indeed, a local union may remain autonomous and independent notwithstanding the fact that the International retains a degree of supervisory authority. *Baldwin v. Poughkeepsie Newspapers, Inc., supra. See Morgan Drive Away, Inc. v. Teamsters Union,* 166 F. Supp. 885 (S.D. Ind. 1958), *aff'd,* 268 F.2d 871 (7th Cir. 1958), *cert. denied,* 361 U.S. 869 (1959) (where the Seventh Circuit held that, even though the int'l constitution placed complete executive, legislative and judicial control in the int'l, as well as plenary power to suspend the local and seize its property, approve strikes, suspend and remove officers and levy assessments, the local would be considered autonomous for purposes of attributing vicarious liability to the int'l if the local retained *some* power); *see also Axel Newman Co. v. Sheet Metal Workers,* 37 LRRM 2038 (D. Minn. 1955).

This judicial gloss on labor agency under section 301 was refined by the Supreme Court in *Carbon Fuel Co. v. United Mine Workers,* 444 U.S. 212 (1979). There, the Court addressed "the . . . issue of whether an international or district union may be held legally responsible for locals' unilateral actions which are concededly in violation of the locals' responsibilities under the contract." 444 U.S. at 216 n. 5. The collective bargaining agreements contained a clear-cut no-strike obligation and a mandatory grievance and arbitration procedure for resolution of all disputes. Nevertheless, three of the local unions covered by the agreements engaged in 48 wildcat strikes from 1969 to 1973. Both the local unions and the signatory union were sued for breach of contract and damages.

The Court refused to hold the International liable for the wildcat strikes by the locals, even though the International was the sole signatory of the collective bargaining agreements. Heeding the advice of Chief Justice Taft in *Coronado Coal Co. v. Mine Workers,* 268 U.S. 295, 304 (1925), that to find the union liable "it must be clearly

shown . . . that what was done was done by their agents in accordance with their fundamental agreement of association," the Supreme Court held:

> 'There was no evidence presented in the district court that either the District or International Union investigated, supported, ratified, or encouraged any of the work stoppages . . . .' [citation omitted] Under . . . the UMWA constitution, the local unions lacked authority to strike without authorization from UMWA [citation omitted] Moreover, UMWA had repeatedly expressed its opposition to wildcat strikes. Petitioner thus failed to prove agency as required by §§ 301(b) and (e), and we therefore agree with the Court of Appeals that 'under these circumstances it was error for the [District Court] to deny the motions of these defendants for directed verdicts.' [citation omitted]

Carbon Fuel Co. v. United Mine Workers, supra, 444 U.S. at 218.

Thus, to hold an International vicariously liable for the acts of the locals *as agents,* it must either be shown that the International "instigated, supported, ratified or encouraged" such acts, or that the locals acted pursuant to "their fundamental agreement of association."[2] *See Mauget v. Kaiser Engineering, Inc.,* 105 LRRM 3374 (S.D. Ohio 1980). Here, plaintiffs have failed to provide evidentiary support for either prong of the labor agency test.

Article VII of section 1(a) of the International Constitution provides in part:

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[2]That is, the locals did not retain the requisite degree of autonomy.

> the subordinate bodies [i.e. locals] of the Brotherhood shall have autonomy in the conduct of their affairs, including organizing activities and the negotiation and administration of collective bargaining agreements where not done by the International Brotherhood itself or where the International Brotherhood is not a party to said collective bargaining agreement and engaging in economic activity to that end; and *provided, further,* that the International Brotherhood shall not be responsible for any actions, activities or omissions of any of its subordinate bodies or their representatives unless the same were authorized or directed by the International Brotherhood. (emphasis added).

Pursuant to the above, plaintiffs argue that local autonomy does not exist, since the International was the sole signatory to the collective bargaining agreement. Plaintiffs miss the point.

Although the International was the sole signatory to the Northeastern States Articles of Agreement (the instant collective bargaining agreement), the local unions here still retain plenary control over collective bargaining, *including* "dispatching of job referral applicants," International Constitution, article XXIV, section 10,[1] and administration of the collective bargaining agreement, Northeastern States Articles of Agreement, articles 5.3, 9, 11 and 26. There is absolutely no indication in the International Constitution, collective bargaining agreement or any of the proffered by-laws that the International was responsible for any of the complained of acts. Moreover, there is not a scintilla of evidence in the record that the International

[1]Four local unions are parties to the Northeastern Agreement: Oswego, Albany, Hartford and Boston. Business Managers of each local vote to accept, or reject, employer proposals.

ratified or approved these acts.[4] To hold, then, that the International is liable here for the impermissible acts of a local simply because the International was the sole signatory to the collective bargaining agreement would be contrary to the holding of *Carbon Fuel.*

IV

Accordingly, defendant's motion for summary judgment is granted in its entirety, and plaintiffs' motion for class certification is denied.

It is so Ordered.

Dated: June 15, 1983
Albany, New York

ROGER J. MINER
U.S. District Judge

[4]Indeed, the Joint Referral Rules Committee, which promulgates rules and regulations for operating hiring halls, expressly prohibits discriminatory treatment in the referral process. (Plaintiffs' motion for class certification, Ex. VIII). It is clear, taking plaintiffs' allegations as true, that the locals complained of did not act in accordance with any "fundamental agreement of association." *Coronado Coal Co. v. Mine Workers, supra.*

A 14

Complaint.

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF NEW YORK.

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and as representatives of the class herein defined

v.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS.

No. 82-CV-352

Plaintiffs, by their attorney, McGinn and Brown, P.C., for their complaint in this action show to the Court and allege:

JURISDICTION

1. This action arises and this Court has jurisdiction under Section 301 of the Labor Management Relations Act of 1947 (c. 120, title III, Section 301, 61 Stat. 156), 29 U.S.C. Section 185 and under 28 U.S.C. Section 1337.

PARTIES

2. The representative plaintiffs are residents of Schoharie (Boss) and Schenectady (Rawlins) Counties, State of New York, and are members of the class herein defined.

3. Defendant is a labor organization which represents employees in industries affecting commerce—as such terms are defined in Sections 2(5) and (7) of the National Labor Relations Act, 29 U.S.C. Section 152(5) and (7).

4. Defendant's duly authorized officers or agents are engaged in representing or acting for employee members within the Northern District of New York—as such terms are used in Section 301(c)(2) of the Labor Management Relations Act of 1947, 29 U.S.C. Section 185(c)(2).

BASIS OF CLASS CLAIMS

5. Throughout the United States, defendant is an exclusive representative of employees for the purposes of collective bargaining—as such terms are used in Section 9(a) of the National Labor Relations Act, 29 U.S.C. Section 159(a).

6. The employees in bargaining units represented by defendant are engaged in field construction work that is recognized as coming under defendant's trade jurisdictions.

7. As such exclusive representative, defendant has entered into labor contracts with employers in industries affecting interstate commerce which contain exclusive referral procedures under which qualified persons are referred for employment.

8. Substantially all such employees actually hired by such employers are provided by those exclusive referral procedures.

9. As such exclusive representative, defendant has also entered into a contract or contracts with such employers which create a National Joint Rules and Standards Committee Governing Operation of Exclusive Referral Plans.

10. The rules and standards adopted and promulaged by said National Committee are incorporated into the labor contracts and any modification is subject to the approval of said National Committee.

11. Subordinate subdivisions of defendant and officers and employees of such subdivisions serve as defendant's agents in administering the exclusive referral procedures contained in the labor contracts described above.

12. Qualified registrants under such exclusive referral procedures are persons who have had at least 8,000 hours actual, practical working experience in the trades covered by the contracts or who have satisfactorily served an apprenticeship in such trades under an apprenticeship program approved by the United States Bureau of Apprenticeship Training or State Division of Apprenticeship Standards.

13. Such exclusive referral procedures require, in substance, among other and similar requirements:

a. that a primary list of qualified applicants for employment be established;

b. that applicants for employment be registered on out-of-work lists and referred for employment from such lists;

c. that the selection of applicants for referral be made on a non-discriminatory basis and not be based on, nor in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies, or requirement;

d. that the referral procedures, rules and all provisions relating to the functioning of the exclusive referral procedures be posted at the registration facility, the actual

places of hire at the employers' job sites and in places where notices to all employees and applicants for employment are customarily posted;

e. that registrants who violate the rules and procedures of an exclusive referral procedure or plan are subject to penalties applied nationwide by the said National Committee up to and including removal from all out-of-work lists governed by the said National Joint Rules and Standards, and

f. that a Local Joint Referral Disputes Committee hear and decide disputes and grievances arising out of the operation of the exclusive referral procedure provided that the grievant first make an earnest effort to resolve his complaint or dispute with the local union Business Manager who is responsible for the administration of the Local Joint Referral Procedures and provided further that such effort be made within seven days of the event or events giving rise to the complaint or dispute.

14. Persons who are employed under such labor contracts have contributions made on their behalf to, and are entitled to benefits from, the Boilermakers National Health and Welfare Fund and the Boilermaker-Blacksmith National Pension Trust and/or similar fringe benefit plans. Such contributions and the existence and amount of such benefits are related directly and proportionally to the lengths of time worked under such contracts.

CLASS ACTION ALLEGATIONS

15. This action is brought on behalf of all persons throughout the United States who are qualified to register under the exclusive referral procedures in the contracts described above and who have been injured and damaged

by defendant's contract violations and breaches of its duty of fair representation relating to the administration of exclusive referral procedures.

16. The class of plaintiffs described in paragraph 15 is so numerous that joinder of all members is impracticable.

17. The claims of the representative plaintiffs are typical of the claims of the class.

18. The representative plaintiffs and their attorney are aware of their obligations to the class and will fairly and adequately protect the interests of the class.

19. This action is maintained as a class action under Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure because the prosecution of separate actions by persons qualified to register under the said exclusive referral procedures would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the defendant and its agents in the administration of exclusive referral procedures throughout the United States.

20. This action is maintained as a class action also under Rule 23(b)(B) of the Federal Rules of Civil Procedure because the prosecution of separate actions by persons qualified to register under the said exclusive referral procedures would create a risk of adjudications which would, as a practical matter, be dispositive of the interests of other members of the class who would not be parties to the adjudications and would impede their ability to protect their interests as qualified registrants under exclusive referral procedures throughout the United States.

21. This action is maintained as a class action also under Rule 23(b)(2) of the Federal Rules of Civil Procedure because

defendant's improper actions and refusals to acat, as alleged in this complaint, are on grounds generally applicable to all qualified registrants under exclusive referral procedures throughout the United States, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

CLASS CLAIM FOR VIOLATION OF CONTRACTS

22. The exclusive referral procedures described in this complaint are included in the labor contracts described in this complaint primarily for the benefit of defendant and the contracting employers.

23. The said exclusive referral procedures necessarily inure to, and also necessarily are for, the benefit of all persons who are qualified to register under such procedures and provide their sole source and means of employment in defendant's trade jurisdictions.

24. For the six years prior to the commencement of this action, defendant has systematically and substantially violated such contracts by failing and refusing to enforce, abide by and comply with the exclusive referral procedures in such contracts, including those set forth in paragraph 13.

25. The operations of the said National Committee and the application of its rules, procedures and sanctions on a nationwide basis, and defendant's pervasive and substantial violations of the exclusive referral procedures, and defendant's deliberate practice and policy to restrict the publication and posting of its labor contracts and referral procedures, and the unavailability, unresponsiveness and "stone-walling" of defendant's agents who are responsible for the administration of the exclusive referral procedures

render irrelevant, inapplicable and futile any resort by individual members of the class to the local grievance procedures relating to the exclusive referral procedures.

26. As a result of the contract violations alleged in paragraph 24, the plaintiffs in the class described in paragraph 15 have been denied employment under such contracts which has resulted in substantial losses of wages and of fringe benefits, including those described in paragraph 14 and they have been required to pay or become obligated to pay the reasonable attorneys fees required to obtain compensation for such damages and to prevent their continuation.

27. Such violations of contract and the resulting injury and damages to plaintiffs will continue unless this Court vindicates the contractual rights of the plaintiffs as a class by the issuance of an injunction prohibiting further violations which, in practical effect, mandates defendant's future compliance with applicable exclusive referral procedures.

CLASS CLAIM FOR BREACH OF DUTY OF FAIR REPRESENTATION

28. The status of defendant as an exclusive collective bargaining representative and its authority to enter into the contracts particularly described in paragraphs 7 and 9 and to administer the applicable exclusive referral procedures under such contracts are derived from the operation and application of the National Labor Relations Act, 29 U.S.C. Sections 151 *et seq.*

29. Pursuant to the National Labor Relations Act, 29 U.S.C. Sections 151 *et seq.*, defendant has a statutory duty to fairly represent the plaintiffs in the class described in

paragraph 15 and to avoid any action affecting plaintiffs which is based on considerations which are irrelevant, invidious or unfair to, or in derogation of, the employment status of such plaintiffs.

30. For six years prior to the commencement of this action, defendant has systematically and substantially breached its said duty of fair representation by failing and refusing to enforce and to abide by and comply with the said exclusive referral procedures.

31. As a result of defendant's said breaches of its duty of fair representation, the plaintiffs in the class described in paragraph 15 have been damaged emotionally and have been denied employment which has resulted in substantial losses of wages and of fringe benefits, including those described in paragraph 14 and they have been required to pay or become obligated to pay the reasonable attorneys fees required to obtain compensation for such damages and to prevent their continuation.

32. Defendant's said breaches of its duty of fair representation and the resulting injury and damages to plaintiffs will continue unless this Court enjoins defendant from continuation of such breaches of duty with the practical effect of mandating defendant's future compliance with applicable referral procedures.

WHEREFORE, plaintiffs on behalf of themselves and as respresentatives of the class defined herein demand judgment

(1) enjoining and restraining defendant, its officers, agents, servants, employees and those persons in active concert or participation with defendants from violating the provisions of any exclusive referral procedure under which

plaintiffs, or any of them, are qualified to register for referral,

(2) enjoining and restaining defendant, its officers, agents, servants, employees and those persons in active concert or participation with defendant from performing or refusing to perform any act affecting plaintiffs, or any of them, based on considerations which are irrelevant, invidious, or unfair to, or in derogation of, the employment status of such plaintiffs,

(3) for fifty million ($50,000,000) dollars and such additional amount as this Court finds due to plaintiffs as compensation for emotional damages, lost wages, fringe benefits and their attorney fees,

(4) providing such declaratory relief as the Court finds appropriate to adjudicate the rights and obligations of the parties, and

(5) for costs.

Dated at Albany, New York
on April 14, 1982

McGINN AND BROWN, P.C.
By Arthur F. McGinn, Jr.
Attorney for Plaintiffs
41 State Street, Suite 1005
Albany, New York 12207
Telephone: (518) 436-7684

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs demand a trial by jury on all issues triable of right by a jury.

Albany, New York
April 14, 1982

McGINN AND BROWN, P.C.
Attorney for Plaintiffs
By Arthur F. McGinn, Jr.

National Joint Rules and Standards Governing Operation of Exclusive Referral Plans (Scottsboro Agreement, January 7, 1977).

EXHIBIT VIII

National Joint Rules and Standards
Governing Operation of Exclusive Referral Plans

WHEREAS, minimum standards for operation of locally administered referral plans are required by federal law and considered of utmost importance for effective, fair and equitable referral of workers for performance of work in the boilermaking industry;

AND, WHEREAS, the International President and the respective employer chairman of each boilermaker National Agreement Negotiating Committee have re-activated and appointed the National Joint Rules and Standards Committee for the purpose of reviewing and revising, where necessary, the minimum standards dated September 15, 1959;

NOW, THEREFORE, the following minimum standards for local joint referral plans are hereby established:

I. Selection and Duties of Local Joint Referral Rules Committee

A. Selection:

The Local Joint Referral Rules Committee shall be composed of a minimum of two (2) employer representatives and two (2) union representatives. The employer representatives shall be appointed by the chairman of the local or area employers'

negotiating committee. The union representatives shall be appointed by the International President or his designee.

B. Duties:

The local Joint Referral Rules Committee shall be empowered to establish or modify any and all rules and regulations consistent with the National Joint Rules and Standards from time to time as deemed advisable for the operation of the job referral plan, including the establishment of appropriate out-of-work lists. Such rules or modifications shall be submitted to the National Joint Rules and Standards Committee for approval.

II. Selection and Duties of Local Joint Referral Disputes Committee

A. Selection:

The Local Joint Referral Disputes Committee shall be composed of equal numbers of employer and union representatives and shall be appointed in a timely fashion, at the time of dispute, by the chairman of the employers' negotiating committee and the International President or his designee, respectively.

B. Duties:

To hear and decide any and all disputes or grievances arising out of the operation of the job referral system, including, but not limited to,

grievances arising out of work registration, work referrals and the preparation of the referral registration lists. All actions of the local Joint Referral Disputes Committees will be reported, in writing, to the National Joint Rules and Standards Committee. Decisions rendered by the Joint Referral Disputes Committee as to any and all disputes arising out of the operation of the job referral system shall be final and binding.

In the event disputes committee fails to render a decision, they shall submit the question in dispute to an impartial umpire to be appointed by the National Joint Rules and Standards Committee. The National Joint Rules and Standards Committee shall determine the party or parties responsible for compensation of the impartial umpire. Decisions on the part of the impartial umpire shall be final and binding on all parties and shall be limited to determination of proper application of the rule or rules in question and shall not include imposition of monetary remedies unless requested to do so in the joint submission of the question by the local Joint Referral Disputes Committee with the approval of the National Joint Rules and Standards Committee.

NOTE: Prior to request for a Disputes Committee hearing, the grievant shall exhaust all available remedies with the administrator of the local Joint Referral Plan.

III. Out-of-Work Lists

A. The local union shall establish and maintain an out-of-work list for registration and referral of

qualifed boilermaker journeymen and apprentices. Registrants shall be referred from the out-of-work list in a non-discriminatory, fair and equitable manner. This may include provisions to alleviate inequities or problems that arise due to variations of job duration or job requirements. Additional out-of-work lists for registration of qualified boilermaker journeymen and apprentices may where circumstances warrant, be established only on the basis of residence and non-residence in the source of labor supply which shall be a geographical area defined in the terms of state, county or city boundaries or a combination thereof as determined by the local Joint Referral Rules Committee.

B. A separate out-of-work list may where circumstances warrant be established to facilitate the registration of applicants with less than the qualifications necessary to be classified as a boilermaker, journeyman or apprentice. Such lists shall be maintained and operated in a fair, equitable and non-discriminatory manner.

C. An applicant for referral must establish and/or reconfirm his availability for work in accordance with applicable area or local Joint Referral Rules.

IV. Applicants for Registration

A. All applicants for registration on the out-of-work lists shall be required to complete a non-discriminatory application form setting forth required personal statistics together with a detailed

record of experience and qualifications in the trade in order to be properly registered in one of the following classifications:

1. Qualified Construction Boilermaker:

   Boilermakers shall be qualifed for registration on a boilermaker's out-of-work list who can satisfactorily establish that they have had at least 8,000 hours actual, practical working experience in the boilermaking trade in the building and construction industry or who have satisfactorily served an apprenticeship in the trade of field construction boilermaker under an apprenticeship program approved by the United States Bureau of Apprenticeship Training or State Division of Apprenticeship Standards.

NOTE: Section IV. A.1. will be applicable to all new registrants for referral beginning upon the date of approval of the revised area or local Joint Referral Rules.

2. Qualified Boilermaker Apprentice:

   Boilermaker apprentices shall be qualifed for registration who can establish that they are indentured and serving an apprenticeship as field construction boilermakers under an apprenticeship program approved by the United States Bureau of Apprenticeship Training or State Division of Apprenticeship Standards.

3. Other applicable classifications as defined and contained in the appropriate labor agreement.

B. When an applicant wishes to register and does not qualify as a boilermaker journeyman, or apprentice he may be registered on the out-of-work list established for this purpose in accordance with Section III-B of these Standards, and referred for work under the terms and conditions of the applicable collective bargaining agreement.

V. Non-Discriminatory Referral

A. The Union and the Employer agree that referral of all classifications of construction boilermakers shall be on the following basis:

1. Competent and qualified registrants shall be referred from the out-of-work lists in a non-discriminatory, fair and equitable manner. This shall be done immediately and in accordance with the requirements of the employer's job.

2. Selection of applicants for referral shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements.

3. The employer retains the right to reject any job applicant referred by the union. In the event the employer does reject the job applicant, his status will not be affected on the out-of-work list.

4. The Union and the Employer shall post, in places where notices to all employees and applicants for employment are customarily posted, all provisions relating to the functioning of these Rules and Standards.

VI. Suspensions and/or Removal From Out-of-Work Lists

A. Registrants shall be suspended from the out-of-work list and therefore not referred for employment for:

1. A period of fifteen (15) calendar days for first offense, or

2. A period of thirty (30) calendar days for second similar offense and each offense thereafter within a one year period,

For Any of the Following Reasons:

1. Any registrant who accepts a referral and does not report to the job ready for work at the appointed time unless he has a reasonable and acceptable excuse approved by the business manager.

2. Quitting or leaving an employer's job unless approved by the employer and the business manager. Such approval shall not be unreasonably withheld by either party.

3. Two consecutive refusals of offered employment within the local unless reasonable excuse

exists which is acceptable to the business manager. The excuse or excuses must be noted each time of occurrence on the registrant's referral record.

B. Any registrant who has been discharged for just and sufficient cause shall not be referred from the out-of-work list to any job for a period of fifteen (15) calendar days following his registration on the out-of-work list.

C. Registrants shall be suspended from out-of-work lists and therefore not referred for employment for a period of ninety (90) calendar days for any of the following reasons:

1. Supplying local registration agency with false data, records, or information used to establish qualifications for registration.

2. Two consecutive discharges for just and sufficient cause or two discharges within six (6) months for just and sufficient cause.

3. Assaulting anyone on any jobsite to which he has been referred.

4. (a) Involvement in any unauthorized strike, work stoppage, slowdown or any other activity having the effect of curtailing the work or otherwise disrupting the job.

   (b) Failure to return to work when involved in a violation of the agreement as instructed by either local or international officer of the union.

(c) Insistence on recognizing illegal or unauthorized picket lines.

(d) Interference with proper administration of referral procedure.

NOTE: All penalties imposed under the above sections shall be reported immediately on the appropriate form to the National Joint Rules and Standards Committee. Penalties for violations under Section VI-C,4 will be applied nationwide by the National Joint Rules and Standards Committee.

D. Violations disruptive of the industry, such as major acts of violence, acts of sabotage or serious chronic violations of referral rules will be referred to the National Joint Rules and Standards Committee for action. Such violations shall be cause for serious disciplinary action up to and including permanent removal from all out-of-work lists governed by these National Standards.

E. Employers shall cooperate with the union by giving to the appropriate union official adequate oral and written reports of all terminations; stating time, date and reason.

VII. It shall be responsibility of each local union to maintain detailed and accurate referral and termination records for each applicant referred to work within the local union. Such records shall be subject to review and use by any duly appointed local Joint Referral Disputes Committee.

VIII. The National Joint Rules and Standards Committee or its designated representative shall have the right to audit the operation of any local referral program at any time.

Scottsdale, Arizona—January 7, 1977
NATIONAL JOINT RULES AND STANDARDS COMMITTEE

For the Union:	For the Employers:
CHARLES W. JONES	R. N. McGLOTHLIN
DAVID L. LEWIS	JOHN F. ERICKSON
JOSEPH C. MEREDITH	RICHARD B. SIERRA

National Joint Rules & Standards Committee Referral Provisions (San Francisco Agreement, September 14-15, 1959).

EXHIBIT VII

National Joint Rules & Standards Committee Referral Provisions

In accordance with Section 8 of Boilermakers' Construction Agreement Exclusive Referral of Men Appendix, the following minimum Standards for Local joint Referral Committees are hereby established by this Committee:

1. *Selection of Local Joint Referral Committee*

A. The Local Joint Referral Committee shall be composed of a minimum of two Employer representatives and two Union representatives.

B. The Employer representatives shall be selected and appointed by the local or area Employers Negotiating Committee from signatory Employers regularly working in the area and employing substantial numbers of Boilermakers.

C. The Union representatives shall be selected and appointed by the local or area Union Negotiating Committee.

D. Local Joint Referral Committee members shall serve without pay for the duration of the local or area agreements. In the event of death or resignation of a Committee member, the replacement shall be made on the same basis as outlined in "B" or "C" above.

2. *Payment for Impartial Umpire*

When it is necessary to secure the services of an Impartial Umpire in accordance with Section 6 of the Exclusive Referral of Men Appendix, the cost of obtaining the services of the Impartial Umpire shall be borne equally by the Union and Employers signatory to the local or area agreement.

3. *Out-of-Work Lists—Source of Labor Supply—*

When out-of-work lists are established on the basis of residents and non-residents in the source of labor supply, the source of labor supply shall be a geographical area defined in terms of State, County or City boundaries or a combination thereof, as determined by the Local Joint Referral Committee.

National Joint Rules & Standards Committee
Referral Provisions

4. *Applicants for Registration*

A. All applicants for registration on the out-of-work lists shall be required to complete an application form setting forth required personal statistics together with a detailed record of his experience and qualifications in the trade.

B. Should any question arise, it shall be the responsibility of the Local Joint Referral Committee to determine the validity of such application.

C. If, for any reason, the Local Joint Referral Committee has reasonable doubts regarding the applicant's qualifications, it may require the applicant to take the established competency examination.

D. When an applicant wishes to register and does not have sufficient experience to qualify his application shall be kept in a "Hold" file for future reference and the Local Joint Referral Committee shall be under no obligation to administer a competency examination.

5. *Examination*

A. The examination for the classification of Rigger should be designed to show that the applicant is capable of performing any and all types of rigging assignments in the Boilermaker field construction trade including:

1. Ability to perform high work.

2. Set up and dismantle cranes, derricks, and hoists.

3. Rigging for all types of lifts.

National Joint Rules & Standards Committee
Referral Provisions

B. The Local Joint Referral Committee is authorized and shall obtain from Employers working in the area information relative to welding tests for current and all future welders including dates such tests were taken, type of test taken and results thereof. Such information shall be made a part of the applicant referral record and shall be accepted by the Local Joint Referral Committee as sufficient evidence in determining competency and placement on the out-of-work list.

A welder, other than above, who can establish his previous experience and qualifications to the satisfaction of the Local Joint Referral Committee shall be considered eligible as a welder on the appropriate out-of-work lists.

The Local Joint Referral Committee is authorized to establish a test designed to determine whether or not other welder applicants are eligible to be placed on appropriate out-of-work lists.

It is understood that the employer may request any Boilermaker-welder applicant to pass the required welding test at the jobsite as a condition of employment as a welder.

C. The Local Joint Referral Committee is authorized to establish such written and/or oral tests for construction Boilermakers which shall be of such detail that an applicant with four years' practical experience in the Boilermaker construction industry could normally pass it. The test shall establish that the applicant has or has not a general knowledge of all phases of the trade, of the machinery, tools and equipment used in doing the work, and that the applicant has sufficient mechanical ability to perform any phase of the work normally expected. The work of the construction Boilermaker shall be considered to include: boilermaking, acetylene burning, rivetting, chipping, caulking, fitting up, grinding, reaming, impact machine operating, preheating, stress relieving, scaffold erecting, the safe use of cable and rope, and the handling of any type of machinery, tools and equipment used in Boilermaker work.

D. The Local Joint Referral Committee shall establish such written and oral tests for Boilermaker-helper which shall be of such detail that it will establish that the applicant has or has not a general knowledge of the trade, of the tools and their use and that the applicant has sufficient mechanical ability to perform any phase of the work normally expected of a helper as well as to permit him to advance in the trade. The work of the Boilermaker-helper shall be considered to include: power brush operating, scaffold erecting, the safe use of cable and rope, unloading and handling material, and any other phase of the boilermaking trade while working with a Boilermaker.

6. *Removal from Out-of-Work Lists*

An applicant shall be removed from and kept off of out-of-work lists for a period of three (3) months for any of the following reasons:

A. Supplying local registration agency with false data, records, or information used to establish qualifications for registration.

B. Failure to return to work, when involved in a violation of the agreement, as instructed by either Local or International officers of the Union.

C. Quitting Employer's job and accepting work elsewhere before Employer's work is completed where such action requires replacement.

D. Two consecutive discharges by any employer signatory to the agreement for just and sufficient cause.

San Francisco, California—September 14-15, 1959.

JOHN E. QUINN, Chairman
HAROLD C. GRANSEE
ERIC MILLER
RUSSELL K. BERG, Secretary
JOSEPH P. McCOLLUM
HOMER E. PATTON